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MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS & CLARK COUNTY, MONTANA

RYAN BRAGG, FAITH SWANSON, TYLER  
SAPP, and CHARLES WHITE,  
Petitioners,

v.

ELEANOR COMBS, RN, at the Montana State  
Hospital (MSH); JILL BUCK, RN, Program  
Manager at the Galen Forensic Mental Health  
Facility; LIVIU GOIA, MD and VIRGINIA HILL,  
MD, psychiatrists at the MSH; GLENDA  
OLDENBURG, RN, Interim Superintendent of MSH  
and Administrator of Addictive and Mental  
Disorders Division (AMDD) of the Montana  
Department of Public Health & Human Services  
(DPHHS); MARY DALTON, RN, Branch Manager  
for DPHHS; and RICHARD OPPER, Director of  
DPHHS, each and all in their individual and official  
capacities,

Defendants.

Cause No. CDV 2016 680

**APPLICATION FOR INJUNCTION,  
TEMPORARY RESTRAINING  
ORDER,  
ORDER TO SHOW CAUSE,  
and**

**COMPLAINT FOR  
DECLARATORY JUDGMENT and  
DAMAGES**

**KATHY SEELEY  
PRESIDING JUDGE**

## INTRODUCTION

This is an action for damages and injunctive relief brought by Plaintiffs under 42 U.S.C. §1983 for violations of their rights under §53-21-142(2), MCA; Article II of the Montana Constitution; and under the 8<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

Plaintiffs are individuals with serious mental illness placed by Court order (two civilly, two criminally) in the custody of the Director of the Montana Dept. Public Health & Human Services (DPHHS) for care and treatment of their illness.

All defendants except OPFER are either registered nurses (RNs) or physicians (MDs) who have violated Plaintiffs' rights by restriction of their liberty for purposes of punishment, convenience, or as a substitute for meaningful mental health treatment programs. All acts and omissions by Defendants were taken under the color of state law and have resulted in past and on-going injuries to the Plaintiffs.

In this action, Plaintiffs challenge

- A. the Defendants' failure to provide care and treatment for them in the least restrictive settings and conditions that are most supportive of patients' personal liberty, as required under §53-21-142(2)(a); and
- B. the Defendants' restriction of Plaintiffs' liberty by use of punitive sanctions and penal measures against them that are not authorized by judicial order, not based on the requirements of law, and not based on their treatment needs as required under §53-21-142(2)(b), MCA.



Plaintiffs request the Court issue a Temporary Restraining Order, an Order to Show Cause, a Declaratory Judgment, Permanent Injunction, an award of damages for past and on-going injury, and fees and costs under §1988, as set forth below in their Prayer For Relief.

## **PARTIES**

### Plaintiffs

1. Plaintiff RYAN BRAGG, age 21, is a patient with several co-occurring mental disorders who was criminally committed to the care and custody of the Director of Director of DPHHS in May, 2016, after violating the terms of his probation in Ravalli County on underlying charges of theft and burglary. He is currently placed at the Forensic Mental Health Facility at Galen, MT.
2. Plaintiff FAITH SWANSON, age 32, is a patient with severe mental illness who was civilly committed (i.e., not due to a crime) to the care and custody of the Director of DPHHS in January, 2010. She has spent the majority of time since then in long-term, locked isolation at the far end of E Wing in what is known as the Intensive Treatment Unit (ITU) of the Montana State Hospital.
3. Plaintiff TYLER SAPP, age 27, is a patient with severe mental illness who was civilly committed by (i.e., not due to a crime) to the care and custody of the Director of DPHHS in May, 2012. Like SWANSON, he has spent the majority of

time since his admission in long-term, locked isolation at the far end of E wing in the Intensive Treatment Unit (ITU) at Warm Springs, MT.

4. Plaintiff CHARLES WHITE, age 30, was found Not Guilty of two counts of homicide by reason of mental illness (NGMI) under §46-14-301(2)(a), MCA. He was criminally committed in April, 2008, to the care and custody of the Director of DPHHS. Since then, he has resided in the “forensic” D Wing of the MSH where he has received treatment for the past 8 years until he was transferred to the new Forensic Mental Health Facility (Galen Facility) upon its opening in March, 2016.

#### Defendants

5. Defendant ELEANOR COMBS is a Registered Nurse licensed by the Montana Board of Nursing. Despite previously having been disciplined by the Montana Board of Nursing in 1999 for (1) incompetence; (2) practicing beyond the scope of practice; (3) violation of federal or state statutes, regulations, or rules; and (3) substandard or inadequate care, she is employed by MSH as a nurse for “forensic” patients including Patients BRAGG and WHITE. She is sued in her individual and official capacity.

6. Defendant JILL BUCK is a Registered Nurse licensed by the Montana Board of Nursing, and employed by the MSH as the Program Manager of the Forensic Mental Health Facility (Galen Facility). She is responsible for the all nursing practice decisions for patients at Galen, including Plaintiffs BRAGG and WHITE. She is sued in her individual and official capacity.



7. Defendant LIVIU GOIA, MD, is the MSH-employed psychiatrist in charge of the psychiatric care and treatment of patients in the Intensive Treatment Unit (ITU). He has authorized the long-term, locked isolation of Plaintiffs SWANSON and SAPP in the Intensive Treatment Unit (ITU) for periods of four and five years, respectively, as a matter of convenience and as a purported mode of “treatment.” He is sued in his individual and official capacity.
8. Defendant VIRGINIA HILL, MD, is the MSH-employed psychiatrist in charge of the psychiatric care and treatment of all forensic patients at the main Hospital and at the Galen facility. She has authorized the use of penal sanctions against Plaintiffs BRAGG and WHITE, including threatening to send Plaintiff BRAGG to the Montana State Prison as punishment. She is sued in her individual and official capacity.
9. Defendant GLENDA OLDENBURG, is a Registered Nurse, and was the acting Superintendent of the Hospital, and is the Administrator of Addictive and Mental Disorders Division of DPHHS. She is responsible for the operation of the Montana State Hospital under §53-21-601, MCA, including enforcement of its policies and procedures, ensuring staff are properly trained, supervised, evaluated, and disciplined, including suspension and termination of employment when appropriate. She is also charged with protecting the rights of patients, including the Plaintiffs, under state and federal constitutions and laws. She is sued in her individual and official capacity.

10. Defendant MARY DALTON, is a Registered Nurse, employed as the Branch Manager responsible for the Addictive and Mental Disorders Division (AMDD) of DPHHS, which includes the Hospital and its Forensic Mental Health Facility (Galen Facility). She is responsible for enforcement of its policies and procedures; ensuring that staff are properly trained, supervised, evaluated, and disciplined, including suspension and termination of employment when appropriate. She is also charged with protecting the rights of patients, including the Plaintiffs, under state and federal constitutions and laws. She is sued in her individual and official capacity.

11. Defendant RICHARD OPPER is the Director of the Montana Department of Public Health & Human Services (DPHHS) which operates the Montana State Hospital and its Galen Facility. Director OPPER is the final decision-maker for DPHHS, including matters of policy and procedure; training, supervision, evaluation, discipline, suspensions, and terminations of employment when appropriate. He is also charged with protecting the rights of patients, including the Plaintiffs, under state and federal constitutions and laws. He is sued in his individual and official capacity.

12. All Defendants in this action at all times relevant to this Application and Complaint, are persons who have acted under color of law.

### **STANDING, JURISDICTION, and VENUE**

Plaintiffs have standing as persons injured by the Defendants' deprivation of their rights, privileges, and immunities under federal and state constitutions and laws.



Defendants COMBS, BUCK, GOIA, and HILL have offices in Warm Springs. Defendants OLDENBURG, DALTON, and OPPER have offices in Helena.

Under §25-2-117, MCA, a county that is a proper place of trial for any defendant is proper for all defendants, so venue is appropriate in either Lewis & Clark or Deer Lodge County.

## FACTS

### Most restrictive conditions / Denial of personal liberty

13. The Montana State Hospital (MSH) is the state-owned and state agency-operated facility located in Warm Springs, Montana, serving seriously mentally ill adult patients, including both civilly-committed patients, and criminally-committed “forensic” patients who have been confined to the Hospital by the criminal court system.
14. The MSH at Warm Springs, MT, includes several group homes located on the main campus, surrounding the primary Hospital building. The primary Hospital building has four separate “wings” designated by letters A, B, D, and E. Wings A, B, and E house civilly-committed patients. Wing D is the “Forensic Wing” that houses criminally-committed patients.
15. In March, 2016, MSH opened a new “Forensic Mental Health Facility” in a former youth penal facility<sup>1</sup> located 3 miles north of Warm Springs at Galen, MT,

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<sup>1</sup> Reintegrating Youthful Offenders

which is operated under a newly-created “endorsement” to a “Mental Health Center” license under ARM 37.106.1906(3) and alleged at ¶¶ 61-63, *infra*.

16. At both the Hospital campus and the Galen facility, a system of “levels” 1-10 is used to manage patient behavior and make residential placement decisions. A patient on Level 1 has few privileges while a patient on Level 10 has more privileges.

17. A patient’s “level” is determined by his ability and willingness to comply with penal-type restrictions and submit to rights violations that apply nowhere else in society except prisons, and that have no treatment rationale. For example, a patient can be dropped down one or more “levels” for failure to make his bed or for moving a picnic table without permission.

18. Both the Hospital and the Galen facility have video recorders installed throughout the premises which document the events alleged below by all Plaintiffs.

**Assault, chemical restraint, mechanical restraint & seclusion: R. BRAGG**

19. Plaintiff RYAN BRAGG, age 21, has a slight physical build at 5’8” and 140 lbs. He has multiple co-occurring mental illnesses. On May 10, 2016, BRAGG was placed in the custody of Defendant OPPER for treatment, who then placed him at the Hospital’s newly-created Forensic Mental Health Facility in Galen.

20. For more than one month, BRAGG had no running water from the sink in his room. On June 16, 2016, in extreme frustration and anger, a fairly common



manifestation of many mental illnesses, Plaintiff BRAGG broke the fire sprinkler head off the ceiling mount in his room.

21. Water from the sprinkler system covered the floor of BRAGG's cell and leaked out into the common area of "Pod A." BRAGG was left in his cell for several minutes while staff mopped up the water from the floor outside his cell.

22. Although still angry about having no water, BRAGG was not violent or physically aggressive toward staff; he was willing to cooperate, and repeatedly shouted out that he would walk voluntarily, without need of force, to the area of his impending punishment.

23. Before Defendant COMBS, the nurse in charge at the Galen facility, even saw Plaintiff BRAGG to assess his condition and determine whether he posed any risk of harm to himself or others, she ordered a restraint blanket and a gurney brought to BRAGG's cell despite his willingness to cooperate and walk on his own.

24. Defendant COMBS would not allow BRAGG to walk voluntarily, and instead ordered an overwhelming physical attack against the him by 8-12 men who forced him down to the floor where they continued to lay on top of the Plaintiff, while strapping him into the "restraint blanket."<sup>2</sup>

25. This excessive use of force was not only completely unnecessary –it was an extreme physical and psychological group assault resulting in physical and

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<sup>2</sup> A "restraint blanket" is essentially a straight-jacket without sleeves.

psychological injury to the Plaintiff BRAGG.

26. After BRAGG was fully immobilized in the “restraint blanket,” he was strapped down to the gurney, and wheeled into a seclusion cell where no fewer than eleven male staff continued to hold BRAGG down to the restraint bed, strip him down to his underwear, and strap his wrists and ankles to the bed.

27. Defendant COMBS further chemically restrained the Plaintiff by ordering a 5 mg dose of the sedative, Zyprexa, stating “heavy on the five” and then personally injected Plaintiff BRAGG with chemicals for punishment and convenience.

28. Defendant COMBS then ordered staff to modify hard plastic restraint straps with a power drill to make them tighter on the Plaintiff. The restraint straps were modified so as to restrict the Plaintiff’s range of movement by another 10 inches more than the device, as manufactured, allowed for patient movement.

29. Plaintiff BRAGG could not see what was happening, but he could hear and feel the sound and vibration of a power tool between his ankles, causing him extreme panic, anxiety, and fear of the power tool being used on his feet.

30. Plaintiff’s psychological distress was obvious. He was agitated, restless, and unable to shift positions. He groaned loudly and cried out several times for relief.

31. After BRAGG had been sedated and strapped down to the restraint bed, Defendant COMBS ordered that his last remaining clothing item, his underwear, must be forcibly cut off of his body. The audio-video and recording of the incident



documents the Plaintiff shouting to COMBS that she was humiliating him and he begged her to allow him some dignity in keeping his underwear.

32. Defendant COMBS told Plaintiff BRAGG that his underwear had to be cut off because the broken sprinkler head had sprayed harmful chemicals on him. Oddly, although she insisted on cutting toxic fabric off his skin, she never ordered him to be showered, rinsed, or even wiped down with a paper towel. COMBS' false explanation about toxic chemicals on Plaintiff BRAGG's underwear was made solely to increase BRAGG's distress, and to coerce his submission to further humiliation.

33. Defendant COMBS refused to allow BRAGG to use a urinal on his own and ordered a male staff to hold BRAGG's penis while he urinated. Later, BRAGG was allowed to hold his own penis in the urinal, but not allowed to wash his hands afterward. When his dinner was delivered, BRAGG would have had to eat with soiled hands, except COMBS refused to loosen his wrist restraints so he could eat.

34. Defendant COMBS had a food tray placed on BRAGG's lap but ordered that his wrists remain bound. The video recording of the incident graphically depicts BRAGG struggling to eat from a tray on his lap with his hands restrained at his sides.

35. Defendant COMBS personally ordered and directed subordinate staff to subject the Plaintiff to physical assault, chemical and mechanical restraint; to strip off all his clothes, and to place him in seclusion. She ordered the denial of toileting,

washing, and eating in a civilized manner, all for the purposes of punishment, humiliation, and convenience.

36. Defendant COMBS told Plaintiff BRAGG that she will inflict this same type of punishment on BRAGG every time he causes her “trouble” and that he is going to stay at a Level 1 (i.e., no privileges) for a long time as punishment for causing “thousands of dollars’ worth of damage” by breaking the sprinkler head.

37. Defendants COMBS, BUCK, and HILL, used the “Levels” system to impose the most restrictive conditions (Level 1) on BRAGG and deny him all personal liberties without the authority of judicial orders, laws, or legitimate treatment needs, as required by §53-21-142(2), MCA.

38. All Defendants are aware of and bound by state law and DPHHS’s own administrative rules requiring that the use of restraint or seclusion must be implemented in the “least restrictive manner possible” and “ended at the earliest possible time.” ARM 37.106.401

39. All Defendants are aware of and bound by DPHHS’s own administrative rules requiring that “all staff who have direct patient contact must have ongoing education and training in the proper and safe use of seclusion and restraint application and techniques and alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of restraints or seclusion.” ARM 37.106.401.



40. Defendant COMBS sought approval from her direct supervisor, co-defendant JILL BUCK, a Registered Nurse who approved, condoned, and encouraged the physical assault, the use of chemical and mechanical restraint, and the seclusion of BRAGG, stating “I will back you, girl” or similar affirmation of COMBS’ conduct.
41. Defendant BUCK was personally present throughout this nurse-created crisis. She was the highest ranking staff person present and she personally observed and explicitly stated her support for the decisions and actions of co-defendant COMBS in subjecting Plaintiff BRAGG to physical assault, chemical and mechanical restraint, and seclusion for the purposes of punishment, humiliation, and convenience.
42. Defendant HILL, MD, visited Plaintiff BRAGG while under sedation, in restraints and seclusion, and authorized his continuing seclusion after the crisis had already ended. Dr. HILL told Plaintiff BRAGG that if he did not like his treatment at Galen, she would transfer him to the Montana State Prison as punishment.
43. Plaintiff BRAGG was returned to less restrictive conditions (his ordinary room) in less than 24 hours. Unfortunately, his co-plaintiffs, SWANSON and SAPP have not been treated as humanely –they were placed in long-term, locked isolation by Defendants GOIA, OLDENBURG, DALTON, and OPPER 4-5 years ago and are still there to this day.

**Long term isolation: F. SWANSON and T. SAPP**

44. Plaintiffs SWANSON and SAPP are civilly-committed patients with severe

mental illnesses who were voluntarily committed to the Hospital through civil proceedings in 2010 and 2012, respectively.

45. The Defendants do not know what to do to treat these profoundly ill patients, so SWANSON and SAPP are placed permanently in locked isolation cells at the far end of E Wing, in an area known as the intensive Treatment Unit (ITU), and given psychotropic drugs in lieu of meaningful psychotherapy. Plaintiffs SWANSON and SAPP are provided no environmental stimulation, and no normal social interaction in their locked ITU cells.

46. Isolation of Plaintiffs SWANSON and SAPP is not limited to emergencies, nor is it ended at the “earliest possible time” as required by every state law and agency administrative rules. Plaintiffs SWANSON and SAPP are kept confined for nearly 24 hours every day in barren cells with heavy steel doors that are locked at all times.

47. Each steel door has a small porthole through which Plaintiffs receive their food and medication, and communicate with staff who deliver them. These isolation cells are where Plaintiffs SWANSON and SAPP eat, urinate, defecate, and spend endless hours staring at the blank walls inside their cells that are wholly devoid of environmental stimulation and normal social interaction. Plaintiffs SWANSON and SAPP are deprived of books, movies, and personal possessions in their cells.

48. Despite numerous requests under §53-21-142(15), MCA, neither SWANSON’s nor SAPP’s guardians have been allowed to see the cells where their



wards have been locked for years without end. As recently as July 27 and 28, 2016, SWANSON's guardian was again denied the statutory right to view SWANSON's cell and the conditions in which she lives every day.

49. Defendant Dr. LIVIU GOIA (GOIA) is the MSH-employed psychiatrist who is responsible for treatment of patients isolated in the ITU, including Plaintiffs SWANSON and SAPP. He has continuously authorized the long-term locked isolation of Plaintiffs without any emergency and in November, 2015, defended his use of long-term, locked isolation against SAPP as both (a) a legitimate treatment modality; and (b) necessary to prevent SAPP from potentially assaulting others.

50. Defendants GOIA, OLDENBURG, DALTON and OPPER have used, and permit to be used, medication and isolation as a substitute for treatment and psychotherapy, in violation of §53-21-145, and -146, MCA.

51. Plaintiffs' families and advocates have observed Plaintiffs' decline and deterioration as a result of Defendants' acts and omissions in their care and treatment of Plaintiffs SWANSON and SAPP. As a result of inadequate and inappropriate treatment, the Plaintiffs' physical, emotional, and psychological health is worse now than when they initially entered the ITU.

52. As a result of their confinement in long-term, locked isolation, Plaintiffs SWANSON and SAPP have suffered injuries including extreme psychological and emotional pain, suffering, and distress; loss of liberty; loss of dignity and

opportunity; denial of adequate mental health treatment; and consequent deterioration of their mental, emotional, and physical health below the level of functioning they possessed in 2010 and 2012, before they were isolated indefinitely in the ITU.

53. Defendants GOIA, OLDENBURG, DALTON, and OPPER are fully aware of, and deliberately indifferent to, the long-term, locked isolation of Plaintiffs SWANSON and SAPP as punishment for behaviors caused by their mental illnesses, and as a convenience to avoid the difficult task of providing active treatment.

54. In March, 2016, when MSH opened the Galen facility for forensic patients, some civil patients, including Plaintiffs SWANSON and SAPP, were transferred to the “forensic” D Wing of the Hospital where criminally-committed patients are held. Plaintiffs SWANSON and SAPP are still locked in “forensic” isolation cells to this day.

**Liberty Restrictions without Court Order, law, or treatment need: C. WHITE**

55. The term “forensic” is used by Defendants to describe patients who are placed in the Hospital by the criminal justice system, including patients who were found guilty but mentally ill (GMI) and those found not guilty but mentally ill (NGMI)

56. Montana law allows patients who are found guilty of a crime, even though mentally ill, to be placed in a correctional facility §46-14-312(2), MCA. However, persons found not guilty of a crime must be placed in an appropriate “mental health facility” for care, custody, and treatment under §46-14-301(2)(a), MCA.

57. The difference between “guilty” and “not guilty” cannot be overstated: it is a



distinction of constitutional proportions.

58. Plaintiff WHITE was tried by the Carbon County District Court and found not guilty of two counts of homicide due to mental illness (NGMI) in 2008. Since then, he has received continuous inpatient psychiatric treatment on the “forensic” D WING of the Hospital. He understands the nature of his illness and that he will require medication to manage his illness for the rest of his life.

59. While Plaintiff WHITE occasionally commits minor rule infractions (e.g., “horseplay” with peers), he poses no risk of harm to himself, to others, or to property. He has long been able to manage his own medication regimen. He has above-average intelligence and a cheerful disposition; he is even-tempered, and fully capable of interacting with others safely and appropriately.

60. Regardless of his low risk of harm, Plaintiff WHITE was removed from “forensic” D of the Hospital where he had resided for 8 years, and placed in the high-security Galen facility immediately upon its opening in March, 2016.

61. The Galen facility was originally designed as a high-security youth prison. MSH has reduced the outside yard area protected with razor wire by half, by building another fenced enclosure inside the yard. MSH has also restricted personal liberties at Galen such as outdoor time, and the possession of personal items such as books, movies, music, and toiletry items. MSH has created a penal environment for

prisoners, not a treatment environment for patients, as seen in the treatment of Plaintiff BRAGG above.

62. Although Defendants OLDENBERG, DALTON and OPPER created the concept of a “Forensic Mental Health Facility” and added it as an “endorsement” to the licensed services of a “Mental Health Center,” the Galen facility does not meet the basic licensure requirements for a “Mental Health Center” as required under 37.106.1906(3) ARM.

“For a mental health center to be licensed, it must provide to its clients all of the following services:

- (a) crisis telephone services;
- (b) medication management services;
- (c) outpatient therapy services;
- (d) community-based psychiatric rehabilitation and support; and
- (e) chemical dependency services.”

63. The Galen facility does not provide these services. Regardless of its title as a “Forensic Mental Health Facility,” the Galen facility does not meet the basic requirements to qualify as a “mental health center” as defined at 37.106.1906, ARM. It is *de facto* a correctional facility in every way.

64. In March, 2016, Plaintiff WHITE was removed from the less restrictive Hospital and placed in most restrictive environment (the Galen facility) without any judicial order and contrary to his actual legal status as not guilty, without any other requirement of law; and without any treatment need for more restrictive conditions.



65. After three months incarceration at Galen Facility, Plaintiff WHITE was returned to the appropriate forensic D Wing of the Hospital, where he did very well. WHITE served on the resident council, and helped to distribute coffee on Friday mornings to patients as a resident council fundraising activity. Patients pay for coffee with their own money by having it deducted from each individual patient's account.

66. Resident Council fund-raising involves the members of the resident council taking orders for coffee from patients on Thursdays. Then on Friday mornings, council members write patient names on Styrofoam cups, fill the cups according to order, and then wheel the coffee cart onto the ward for staff delivery to patients who had ordered the day before.

67. On Friday, June 24, 2016, a patient who had missed the ordering deadline the day before, requested a cup of coffee on Friday morning. There being no time to charge it to the patient's own account, another resident council member offered to give her one of his 2 free cups of coffee that he receives as a privilege for serving as a resident council member. No money or product was lost; it was simply one patient giving his own cup of coffee to another patient who had missed the deadline to order.

68. Plaintiff WHITE knew that the patient had missed the ordering deadline, but he also knew that the other council member was donating his own second cup of coffee to her. So Plaintiff WHITE wrote the patient's name on a Styrofoam cup and placed it on the delivery cart for D Wing.

69. Upon discovery that WHITE had written a patient's name on an unauthorized Styrofoam cup of coffee donated by a council member to another patient, Defendant COMBS ordered WHITE to be immediately removed from the Hospital and transferred to the Galen facility. She ordered that WHITE be dropped from a Level 6 back down to a Level 2, meaning the denial of practically every privilege a patient is allowed, including the right to receive a birthday package that had already arrived for him,

70. Friday morning WHITE was passing out coffee amongst his peers; Friday evening was under the highest-level penal restrictions and the only allowed to see through a plastic security window.

71. In July, 2016, Plaintiff WHITE filed a grievance to protest his transfer back to the penal conditions at Galen and the loss of nearly every privilege a patient is allowed; his grievance was summarily denied and WHITE was told by his treatment team staff there would be further negative consequences if he pursued the matter.

72. Defendant HILL approved the removal of WHITE from the Hospital and his transfer to the correctional facility at Galen and the loss of all practically every privilege a patient is allowed, including the right to receive mail and personal visits.

73. Defendants COMBS, BUCK, and HILL, have abused the "Levels" system to impose highly restrictive conditions on WHITE, and to arbitrarily deny personal liberties (such as sleeping in darkness at night), that are not based on judicial orders,



laws, or WHITE's treatment needs, as required by Montana Code Annotated § 53-21-142(2).

74. The Galen Facility has too few staff to meet the legal rights, personal liberties, and mental health needs of patients, including Plaintiffs, resulting in, among other violations, patients being prohibited from going outdoors in violation of §53-21-142(9), MCA, and being denied opportunities for interaction with members of the opposite sex in violation of §53-21-142(10), MCA.

75. Defendants OLDENBURG, DALTON, and OPPER have failed to provide a sufficient number of staff, and sufficient training to existing staff, to ensure the protection of Plaintiffs' legal rights, personal liberties, and mental health needs.

76. Defendants COMBS, BUCK, and HILL, are also responsible for the imposition of penal sanctions against patients, including the transfer of other patients to the Montana State Prison for punishment, and the threatening of such imprisonment against Plaintiff BRAGG above.

77. One of the more severe penal restrictions imposed at Galen is the subjection of patients to constant 24-hour lighting throughout the night which disrupts natural sleep cycles of all patients, including Plaintiffs BRAGG and WHITE.

78. In July, 2016, Plaintiff WHITE requested the lights in his cell be shut off at night so that he can sleep in darkness. Defendant HILL told him no, and that

sleeping with lights off was a “higher level” privilege allowed at the main Hospital which he could “work toward” during his incarceration at Galen.

79. Defendants COMBS, BUCK, and HILL, have abused the “Levels” system to impose highly restrictive “Level 1 and 2” conditions on BRAGG and WHITE, and to arbitrarily deny personal liberties, such as sleeping in darkness at night, that are not based on judicial orders, laws, or BRAGG’s and WHITE’s treatment needs, as required by §53-21-142(2), MCA.

80. Defendants COMBS, BUCK, and HILL, are also responsible for frequent imposition of penal sanctions against patients, including transferring patients to the Montana State Prison for punishment, and threatening such imprisonment against Plaintiff BRAGG above.

81. All Defendants have denied, and continue to deny all Plaintiffs’ liberties of every kind, from the least cup of coffee, to the most profound rights to dignity and freedom, by use of penal restrictions against Plaintiffs, that are not authorized by judicial order, not based on the requirements of law, and not based on their treatment needs as required under §53-21-142(2)(b), MCA.

82. As of August 11, 2016, both Defendants ELEANOR COMBS and JILL BUCK remain on active duty in the same or similar positions of trust and authority over patients, and continue to present a daily threatening presence to patients and other staff within MSH and the Galen facility.



83. Defendants OLDENBURG, DALTON, and OPPER failed to implement Hospital policies and procedures with regard to chemical and mechanical restraint and isolation, and personnel management, and failed to supervise, evaluate and correct the unlawful use of seclusion and restraint.
84. Defendants OLDENBURG, DALTON, and OPPER failed to ensure their co-defendants were properly trained in techniques to prevent escalation and agitated behavior, which directly resulted in the unlawful use of seclusion and restraint against Plaintiffs BRAGG, SWANSON, and SAPP; failed to supervise, evaluate and discipline their Co-Defendants COMBS, BUCK, GOIA, and HILL; failed to conduct a timely investigation of the abuse of BRAGG; and failed to remove co-defendants COMBS and BUCK from active duty while their actions were being investigated.
85. Defendants OLDENBURG, DALTON, and OPPER failed to investigate these violations of Plaintiffs' rights and allowed Defendants COMBS and BUCK to maintain a continuing daily presence and control, reinforcing the appearance to patients and staff alike that these nurses are immune from review, correction, control or consequence by Defendants OLDENBURG, DALTON, and OPPER, and are free to violate patient rights at will, under color of DPHHS' legal authority.
86. All Defendants' have restricted all Plaintiffs' right and liberties by use of punitive sanctions and penal measures against them that are not imposed by judicial

order, not based on the requirements of law, and not based on their treatment needs as required under §53-21-142(2)(b), MCA.

87. Twenty five years ago, the Defendants' predecessors were ordered by the 1<sup>st</sup> Judicial District Court to end the same and similar unlawful patients' rights violations as are now being challenged in this action. Ihler, et al., v. Chisholm, et al., 1<sup>st</sup> Judicial District Court, #ADV 88-383 (1991).

88. The Defendants named herein are the successors in office to the Defendants in Ihler. As such, they are charged with knowledge of that 1991 Judgment declaring the following acts and omissions are "constitutionally and/or statutorily deficient:"

- Inadequate monitoring, review, and documentation of the use of seclusion and restraint;
- use of PRN orders and minimum time periods for keeping patients in seclusion//restraint or behavior control;
- failure to transfer to less restrictive environment;
- inadequate treatment plan;
- insufficient behavioral and psychoanalytic therapy;
- depriving patients from keeping personal possessions and books in their rooms; and
- inadequate training of clinical staff

89. All Plaintiffs have suffered injury by all Defendants' failure to provide care and treatment in the least restrictive settings and conditions that are most supportive of personal liberties as required under §53-21-142(2)(a), MCA.

90. All Defendants named herein have violated and acquiesced in the violation of patients' rights under the state and federal constitutions and laws. The failure of meaningful oversight and administration by co-defendants OLDENBURG,



DALTON, and OPPER caused and continues to cause irreparable injury to all patients, including Plaintiffs herein.

91. Plaintiffs' injuries include extreme psychological and emotional pain, suffering, and distress; loss of liberty; loss of dignity and opportunity; and deterioration of their mental, emotional, and physical well-being as a result of Defendants' acts and omissions taken under color of law.

### CAUSES OF ACTION

#### VIOLATIONS OF STATE LAW

##### **Count I. Violation of Mont. Code Ann. § 53-21-142(2): Least Restrictive Conditions**

92. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

93. The right to treatment in the "least restrictive conditions" is an explicit statutory right under Montana Code Annotated § 52-21-142(2), and it includes the right to appropriate treatment and services in a setting and under conditions that:

- a. are the most supportive of the patient's personal liberty; and
- b. restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders (emphasis supplied).

94. Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's rights to appropriate treatment and services in the least restrictive settings and conditions;

95. Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's rights to receive appropriate treatment and services in the least restrictive settings and conditions.

**Count II. Violation of Mont. Code Ann. § 53-21-142(13): Environment**

96. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

97. Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's rights to a humane psychological and physical environment providing for their comfort and safety; promoting their dignity and their efficient attainment of treatment goals.

98. Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's rights to a humane psychological and physical environment providing for their comfort and safety; promoting their dignity and their efficient attainment of their treatment goals.

**Count III. Violation of Mont. Code Ann. § 53-21-142(15): Family access**

99. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

100. Montana law requires that a patient's legal representatives must be given reasonable access to:

- (a) the patient;
- (b) the program or facility areas where the patient has received treatment or has resided or the areas to which the patient has had access; and



- (c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

101. Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's rights to the assistance of their personal representatives in the exercise or protection of their rights by denying the legal representative's access to the areas where SWANSON and SAPP have resided, and denying information pertaining to their treatment and services.

**Count IV. Violation of Mont. Code Ann. § 53-21-145: Medication**

102. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

103. Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiff BRAGG's right to be free from the use of unnecessary or excessive medication for the purposes of punishment.

104. Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's rights to be free from the use of unnecessary or excessive medication for the convenience of staff, or as a substitute for a treatment program.

**Count V. Violation of Mont. Code Ann. § 53-21-146: Restraint and Seclusion**

105. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

106. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiff

BRAGG's right to be free from physical assault, restraint and seclusion for the use of medication for the purposes of punishment.

107. Defendants' knowing and intentional failure to comply with the laws governing isolation has resulted in (a) isolation of Plaintiffs when there is no emergency and no risk of injury to themselves or others; (b) isolation of Plaintiffs in the most restrictive environment; the (c) isolation of Plaintiffs as punishment or for the convenience of staff; (d) failure to end isolation at the earliest possible time; and (e) isolation of Plaintiffs as a substitute for a treatment program.

108. In their acts and omissions aforesaid, Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's right to be free from physical restraint and seclusion for the convenience of the staff, or as a substitute for a treatment program.

### VIOLATION OF MONTANA CONSTITUTION

#### **Count VI. Violation of Article II, Section 3. Inalienable Rights**

109. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

110. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's rights to pursue life's basic necessities, enjoy and defend their life and liberties, and seek their safety, health and happiness in all lawful ways.



111. Defendants GOIA, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's right to pursue life's basic necessities, enjoy and defend their lives and liberties, and seek their safety, health and happiness in all lawful ways.

**Count VII. Violation of Article II, Section 4. Individual Dignity**

112. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

113. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's right to dignity, equal protection of the laws, and protection from discrimination based on their social or physical condition.

114. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON'S and SAPP'S rights to dignity, equal protection of the laws, and protection from discrimination based on their social or physical condition.

**Count VIII. Violation of Article II, Section 17. Due process**

115. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

116. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's right to be free from arbitrary and unreasonable restraint under the due process clause of Article II, Section 17, of the Montana constitution.

117. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON'S and SAPP'S rights to be free from arbitrary and unreasonable restraint under the due process clause of Article II, Section 17, of the Montana constitution.

**Count IX. Violation of Article II, Section 22. Excessive Sanctions**

118. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

119. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's right to be free from excessive sanctions that are not imposed on Plaintiffs by judicial order, not based on the requirements of law, and not based on their treatment needs.

120. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON'S and SAPP'S rights to be from excessive sanctions that are not imposed on Plaintiffs by judicial order, not based on the requirements of law, and not based on their treatment needs.

VIOLATIONS OF US CONSTITUTION

**Count X. Violation of the Eight Amendment: Cruel punishment**

121. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.



122. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's right to be free from cruel punishment.

123. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON'S and SAPP'S rights to be free from cruel punishment.

**Count XI. Violation of Fourteenth Amendment: Due Process**

124. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

125. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG's and WHITE's right to be free from arbitrary and unreasonable restraint under the due process clause of the 14<sup>TH</sup> Amendment, United States Constitution.

126. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON'S and SAPP'S rights to be free from arbitrary and unreasonable restraint under the due process clause of the 14<sup>th</sup> Amendment to the United States Constitution.

1991 District Court Injunction

**Count XIII. Violation of Injunction: *Ihler, et al., v. Chisholm, et al., (1991)***

127. The preceding ¶¶ 1-91 are re-alleged as though set forth here in full.

128. In 1991, the same violations alleged here were tried by the 1<sup>st</sup> Judicial District Court and found to be “constitutionally and/or statutorily deficient in [several areas]”:

- Inadequate monitoring, review, and documentation of the use of seclusion and restraint;
- use of PRN orders and minimum time periods for keeping patients in seclusion//restraint or behavior control;
- failure to transfer to less restrictive environment;
- inadequate treatment plan;
- insufficient behavioral and psychoanalytic therapy;
- depriving patients from keeping personal possessions and books in their rooms; and
- inadequate training of clinical staff

*Ihler, et al., v. Chisholm, et al.*, 1<sup>st</sup> Judicial District Court #ADV 88–383 (1991).

129. Though not parties to that action, the present Defendants, as their successors in official capacity, are charged with knowledge that the same acts and omissions alleged herein were permanently enjoined in 1991.

130. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiffs BRAGG’s right to be free from all the same violations enjoined in *Ihler*:

- failure to transfer to less restrictive environment
- inadequate treatment plans;
- insufficient behavioral and psychoanalytic therapy;
- depriving patients from keeping personal possessions and books in their rooms; and
- inadequate training of clinical staff.”



131. Defendants GOIA, OLDENBURG, DALTON, and OPPER have, under color of law, violated Plaintiffs SWANSON's and SAPP's rights to be free from all the same violations enjoined in *Ihler*:

- use of PRN orders and minimum time periods for keeping patients in seclusion//restraint or behavior control;
- failure to transfer to less restrictive environment;
- inadequate treatment plan;
- insufficient behavioral and psychoanalytic therapy;
- depriving patients from keeping personal possessions and books in their rooms; and
- inadequate training of clinical staff

132. In their acts and omissions aforesaid, Defendants COMBS, BUCK, HILL, OLDENBURG, DALTON and OPPER have, under color of law, violated Plaintiff WHITE's right to be free from all the same violations enjoined in *Ihler*:

- failure to transfer to less restrictive environment;
- inadequate treatment plan;
- insufficient behavioral and psychoanalytic therapy;
- depriving patients from keeping personal possessions and books in their rooms; and
- inadequate training of clinical staff

133. In all these, Defendants invoked the legal authority of the state agency, DPHHS, and that legal authority conferred upon them by their respective professional licensing boards.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

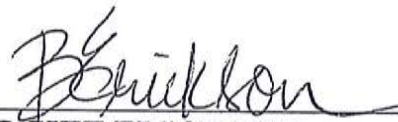
- A. Issue a Temporary Restraining Order under Montana Code Annotated § 27-19-314, MCA, requiring Defendants to:
1. Release Plaintiffs SWANSON and SAPP from the most restrictive conditions within the forensic unit, and place them in civil patient rooms, not isolation cells, during the pendency of this action;
  2. Release Plaintiff WHITE from the most restrictive conditions at the Galen facility and return him to the less restrictive conditions of the Hospital's Wing D forensic unit where he had resided for 8 years prior to the opening of the Galen facility in March 2016.
  3. Restore all Plaintiffs' personal liberties that are not restricted by judicial order, by any other requirement of law, or based upon individualized assessments of patients' needs and capacities.
  4. Review each Plaintiff's treatment plan to ensure that all restrictions of Plaintiffs' rights and liberties are rationally related to some treatment objective and not punitive in nature.
  5. Prohibit Defendant COMBS from having any contact with any patients, either at MSH or at Galen, due to the seriousness of the abuse allegations, until the questions about her professional competence to practice as a registered nurse are resolved in this matter.



6. Require Defendants BUCK, OLDENBURG, DALTON, and OPFER personally to undergo training by qualified and experienced professionals in (a) avoidance of situations leading to the use of restraint and seclusion; (b) use of restraint and seclusion except only in emergency situations; (c) appropriate techniques of restraint to prevent injury to the patient; and (d) ending restraint and seclusion at the earliest possible time.
  7. Require Defendants BUCK, OLDENBURG, DALTON, and OPFER immediately to provide training by qualified and experienced professionals to all direct care staff at MSH and the Galen Facility in (a) avoidance of situations leading to the use of restraint and seclusion; (b) use of restraint and seclusion except only in emergency situations; (c) appropriate techniques of restraint to prevent injury to the patient; and (d) ending restraint and seclusion at the earliest possible time.
- B. Issue an Order to Show Cause under Montana Code Annotated § 27-19-301(2);
  - C. Plaintiffs request a trial by jury of all matters alleged herein.
  - D. Issue a Declaratory Judgment under Title 27, Chapter 8, Montana Code Annotated, declaring that Defendants' acts and omissions aforesaid constitute violations of Plaintiffs' state and federal statutory and constitutional rights as set forth in Counts I - XIII herein.

- E. Issue an Injunction under Montana Code Annotated § 27-19-201, to prevent Defendants from further violating Plaintiffs' state and federal statutory and constitutional rights and liberties under color of law.
- F. Award Plaintiffs actual and compensatory damages as are deemed fair and just under 42 U.S.C. § 1983 to compensate each Plaintiff for loss of liberties, dignity, and opportunity, extreme physical, psychological and emotional pain and suffering, distress caused by Defendants' failure to provide meaning mental health treatment and consequent deterioration of their mental, emotional, and physical health and well-being caused by Defendants' acts and omissions set forth above.
- G. Award Plaintiffs their costs, including attorneys' fees, in accordance with 42 U.S.C. § 1988, with such other relief as the Court deems just and proper.

DATED this 15 day of August, 2016



BRIDGITT ERICKSON  
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HELENA, MT 59601  
Telephone: (406) 449-2344  
E-mail: [bridgitt@disabilityrightsmt.org](mailto:bridgitt@disabilityrightsmt.org)

Attorneys for Petitioners



VERIFICATION

STATE OF MONTANA )  
 :  
County of Deer Lodge )

I, the undersigned RYAN BRAGG, being first duly sworn, upon oath swear that I was offered the opportunity to read the Application and Complaint and I have chosen to have my attorney, Bridgitt Erickson, read the contents to me verbatim, with an opportunity for me to make corrections or additions to the statements made in this Application and Complaint.

I have personal knowledge of the facts and circumstances alleged in this Application and Complaint, and I verify that the statements made herein, insofar as they pertain to me, are true and accurate to the best of my knowledge, information, and belief.

Ryan Bragg

Name of Affiant

SUBSCRIBED AND SWORN TO before me this 4 day of August ~~July~~, 2016

\_\_\_\_\_  
NOTARY PUBLIC

There is no notary at Galen so I, as an officer of Court, witnessed Mr. Bragg's signature above.

Bridgitt Erickson 8/4/16

VERIFICATION

STATE OF MONTANA            )  
  :  
County of Lewis & Clark    )

I, the undersigned CHARLES McCARTHY, being first duly sworn, upon oath swear that I have read the foregoing Application and Complaint and the statements made in the Application and Complaint.

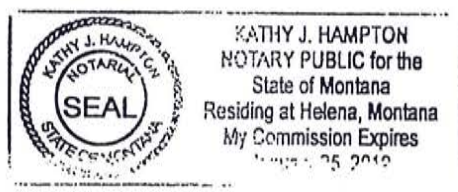
As FAITH SWANSON's "P&A" Advocate, I have personal knowledge of the facts and circumstances of Plaintiff FAITH SWANSON, and I verify that the statements made in this Application and Complaint are true and accurate to the best of my knowledge, information, and belief.

Charlie McCarthy            *Charles F McCarthy*  
\_\_\_\_\_

Name of Affiant

SUBSCRIBED AND SWORN TO before me this 12 day of August, 2016

*Kathy J Hampton*  
\_\_\_\_\_  
NOTARY PUBLIC



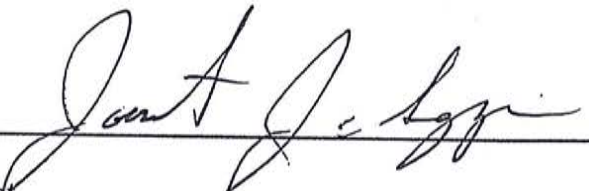


VERIFICATION

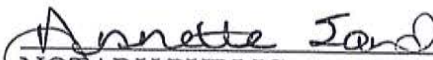
STATE OF MONTANA            )  
  :  
County of YELLOWSTONE    )

I, the undersigned JONATHAN SAPP, being first duly sworn, upon oath swear that I have read the foregoing Application and Complaint and the statements made in the Application and Complaint.

As TYLER SAPP's Guardian, I have personal knowledge of the facts and circumstances of Plaintiff TYLER SAPP, and I verify that the statements made in this Application and Complaint are true and accurate to the best of my knowledge, information, and belief.

Jonathan Sapp   
\_\_\_\_\_  
Name of Affiant

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of August, 2016

  
\_\_\_\_\_  
NOTARY PUBLIC

